Supreme Court, U.S.
FILED
JUL 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1217

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOSEPH P. RUSSONIELLO, *et al.*,
Petitioners,

v.

JOSE J. OLAGUES, *et al.*,
Respondents.

On a Writ of Certiorari to the Court of Appeals for the Ninth Circuit

BRIEF OF AMICI CURIAE FEDERATION FOR AMERICAN IMMIGRATION REFORM AND IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF PETITIONERS

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DATED: July 3, 1987

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29 pp

QUESTIONS PRESENTED

1. Whether the termination of the investigation in this case for lack of prosecutorial merit renders moot respondents' prayers for injunctive and declaratory relief.

2. Whether a federal court may, consistent with Article III of the Constitution, consider a pre-indictment challenge to the manner and scope of noncoercive investigatory activities by a United States Attorney.

3. Whether, assuming that Article III in some circumstances allows for pre-indictment judicial review of the manner and scope of noncoercive investigatory activities by a United States Attorney, a federal court may enjoin or declare unconstitutional such activities when those activities were not taken in bad faith or for purposes of harassment, do not violate any clearly established rights, and have not been shown to be devoid of legitimate investigatory purpose.

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BRIEF OF AMICI CURIAE
FEDERATION FOR AMERICAN IMMIGRATION REFORM
and the
IMMIGRATION REFORM LAW INSTITUTE
IN SUPPORT OF PETITIONERS

INTEREST OF AMICI CURIAE

The Federation for American Immigration Reform (FAIR) is a nonprofit membership corporation founded in 1978 for the purpose of educating the general public concerning the economic, social, environmental, demographic and other effects of immigration into the United States. FAIR seeks, *inter alia,* to enhance the ability of the United States to preserve the meaning and value of United States citizenship by ensuring that non-citizens do not, by malfeasance and fraud, exert rights properly reserved for citizens. The outcome of this case may influence the ability of the government to ensure the integrity of the voter registration process.

The Immigration Reform Law Institute (IRLI) is a non-profit public interest law firm and educational corporation founded in 1986, *inter alia,* to educate interested members of the legal profession on the nature of and the policy considerations underlying U.S. immigration and naturalization law. IRLI seeks to ensure that important distinctions between United States citizens and other persons are maintained.

Accordingly, FAIR and IRLI take this opportunity to express to the court their views on the issues presented in this case. In accordance with S.C.R. 36, both parties have consented in writing to the submission of this brief.

STATEMENT OF CONTEXT

This case, at its heart, deals with voter fraud by non-citizens and the means available to prevent such fraud.

The problem of voter fraud by aliens is not limited to the circumstances in this case. Voter fraud by non-citizens is wide-spread.

In light of the repeated and widespread reports of voter fraud by aliens, government officials have attempted to determine whether such proscribed practices occur in their jurisdictions. This case comes before this Court as a challenge to one of those investigations. Whether or not this case is moot on the facts, voter fraud by non-citizens has occurred in many parts of the country and, given increasing pressures and reduced opportunities for migration worldwide, undoubtedly will occur again as aliens learn that voting receipts and records can be used as identification.

Investigations similar to those at issue here have raised serious questions concerning the number of ineligible aliens who have sought voter registration cards as a form of documentation, *See e.g.*, "Officials Unsure Of Alien Voter Numbers," *McAllen Monitor*, April 20, 1987, at 4A, col. 5. In the few instances where it has been investigated, authorities have found that voter registration fraud by unauthorized aliens is significant. *See e.g.*, "Authorities Say Illegal Aliens Vote In Elections," *Longview Morning Journal*, April 21, 1987, at 1, col. 5; "Vast Alien Fraud Detailed By State," *Chicago Sun-Times*, April 9, 1982, at 5, col. 1 (details investigation by Illinois State Attorney General Ty Fahner).

In other instances, fraudulent voting by ineligible aliens has been alleged to influence the outcome of an election. *See e.g., Whitis v. Gonzales*, Case No. 87-16624 (63rd Judicial District Court of Val Verde Coun-

ty, Texas) (Final Judgment filed May 18, 1987) (allegations by defeated Mayor Herb Whitis that Sergio Gonzalez's 34-vote victory for Mayor of Del Rio, Texas was influenced by the votes of ineligible non-citizens).

Congress is concerned about document fraud, as evidenced by the Immigration Reform and Control Act of 1986, ("IRCA") Pub.L.No. 99-603, 100 Stat. 3359, §§ 101(e)(verifying Social Security cards), (f) (stopping counterfeit Social Security cards), and 103, (amending 18 U.S.C. § 1546, concerning fraud and misuse of documents), and various provisions of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 *et seq.* (1986). Congress passed the IRCA "to effectively control unauthorized immigration to the United States." Committee of Conference, Joint Explanatory Statement on Immigration Reform and Control Act of 1986, 99th Cong., 2d Sess., H. Rpt. 99-1000, 85 (1986). Aliens use fraudulent documents to obtain benefits to which they are not entitled. *Newton v. INS*, 736 F.2d 336, 339 (6th Cir. 1984). *See also*, "Birth Papers Aid Alien Fraud," *San Antonio Express-News*, November 11, 1984, at C-1, col. 1; "Chasing the Bad Paper at the Borders," *New York Times*, June 9, 1985, at 4, col. 3.

As opportunities for illegal immigration become more difficult under the IRCA, more illegal immigrants may attempt to use document fraud to enter or remain in the United States. To try to combat document fraud, Congress raised penalties for immigration-related fraud. IRCA § 103 (amends 18 U.S.C. § 1546 to increase penalties for fraud and misuse of visas, permits, and other documents). *See also* Immigration Marriage Fraud Amendments of 1986, Pub.L.No. 99-639, 99 Stat. , Act of Nov. 10, 1987 (amends 8 U.S.C. §

1182(a)(19) to exclude aliens who seek benefits by fraud).

Moreover, it is a crime to make a false claim of citizenship or to register fraudulently to vote. 18 U.S.C. § 911 (1986); 42 U.S.C. § 1973i(c) (1986).

Pressure on American immigration laws is increasing. Although Congress last year passed the IRCA, the problem of illegal immigration remains troublesome. In 1965, the Immigration and Naturalization Service (INS) apprehended only 110,371 aliens who were unlawfully present in the United States. U.S. Department of Justice, 1983, Statistical Yearbook of the Immigration and Naturalization Service, *Aliens Apprehended, Aliens Deported and Aliens Required to Depart, Fiscal Years 1982- 1983* (ENF 1.1). For the fiscal years 1983 to 1985, the INS reports that over three million aliens were apprehended and either deported or required to depart the country. *Id.* (Total for 1983: 1,251,357.) After a brief drop in apprehensions of aliens attempting to cross our borders illegally, the number of illegal immigrants apprehended by the INS is rising once again toward a record rate. McDonnell, "Surge in Arrests of Aliens Reported," *Los Angeles Times*, San Diego County Ed., July 3, 1987, at I-35, col.1.

The increasing number of immigrants will also affect laws concerned with language, such as the federal law requiring bilingual ballots. 42 U.S.C. § 1973aa. The countries from which most immigrants originate have changed over the last thirty years. For the decade 1951-1960, an average of 32 percent of immigrants ar-

rived from English-speaking countries. U.S. Department of Justice, 1980, Statistical Yearbook of the Immigration and Naturalization Service, *Immigration by Country for Decades 1820-1980*, (Table 1). By 1984, only 17 percent of all legal immigrants came from English-speaking countries. U.S. Department of Justice, 1983, Statistical Yearbook of the Immigration and Naturalization Service, *Immigrants Admitted By Classes Under The Immigration Laws and Country or Region of Birth, Fiscal Year 1984,* (IMM 2.3). As the Ninth Circuit decision below recognized, and Respondents concede, the government's interest in protecting the integrity of the franchise from voter registration fraud is a compelling one. *Olagues v. Russoniello*, 797 F.2d 1511, 1521 (9th Cir. 1986) (en banc) (hereinafter *Russoniello). See Dunn v. Blumstein*, 405 U.S. 330, 345 (1972) (hereinafter *Blumstein*).

There are few more compelling state interests than those which ensure that each person who properly exercises his right to vote has that vote properly counted against only all other eligible voters. Voter fraud improperly dilutes votes and skews election results. Protection of the franchise, so long as investigations are lawfully conducted within reasonable bounds, is not only permissible, it is required. It is an interest that goes to the very heart of consensual republican democracy.

SUMMARY OF ARGUMENT

The classification of "recently registered, foreign-born voters requesting bilingual ballots" is not a constitutional suspect class. The class does not fall under the traditionally- defined suspect classes of race, color, or national origin. Instead, the Ninth Circuit has con-

structed a class based upon three characteristics which, each standing alone, do not come close to being equivalent to a suspect class. Nor do the three characteristics combined constitute the elements of a suspect class.

This Court should not permit a classification of "foreign born" to become synonymous with "national origin" classifications. Such a classification will wreak havoc with alienage classifications in various federal laws.

Even assuming, *arguendo,* that a "foreign-born, bilingual ballot" suspect class exists, the actions of the U.S. Attorney can survive strict scrutiny because they were narrowly tailored to serve the compelling state interest of enforcing voter fraud statutes. The U.S. Attorney's investigation was conducted to determine the very elements of a criminal offense; to eliminate investigations of "foreign-born, bilingual ballot" voters will eliminate investigations of non-citizen voter fraud.

I. THE CLASS DEFINED BELOW IS NOT A SUSPECT CLASS BECAUSE IT IS DEFINED BY LANGUAGE, NOT RACE, COLOR OR NATIONAL ORIGIN, NOR SHOULD IT BE A SUSPECT CLASS.

If this Court allows the decision of the Ninth Circuit to stand, a new suspect classification would be established for the "foreign-born, recently-registered bilingual voter." The new classification would become a functional equivalent of the "national origin" classification. A new "foreign-born" classification would be a

serious threat to statutory classifications of alienage in a variety of federal laws, including the immigration laws.

A suspect class is a class "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973). *See United States v. Carolene Products Co.*, 304 U.S. 144, 152-3, n. 4 (1938).

These principles are true for classifications resulting from state action examined under the Equal Protection Clause of the 14th Amendment, as well as those examined under the Fifth Amendment. *Plyler v. Doe*, 457 U.S. 202 (1982).

Often such scrutiny is indicated by an "immutable characteristic", such as skin color or race. *Frontiero v. Richardson*, 411 U.S. 677 (1973). An immutable characteristic is present with respect to each class held by this Court to be suspect: race, *Loving v. Virginia*, 388 U.S. 1 (1967); national ancestry, *Hernandez v. Texas*, 347 U.S. 475 (1954); and, with respect to state classifications inconsistent with federal alienage classifications, legal alienage, *Graham v. Richardson*, 403 U.S. 365 (1971); *see also In re Griffiths*, 413 U.S. 717 (1973); *De Canas v. Bica*, 424 U.S. 351 (1976).

With respect to action by the federal government, the Supreme Court has held that the treatment of alienage classifications are given much broader latitude, owing to the broad federal power over immigration. U.S. CONST. art. I, § 8, cl. 4; *see Takahashi*

v. Fish and Game Comm'n. 334 U.S. 410 (1948). The Court has rejected entirely the claim that "illegal aliens" constitute a suspect class. *Plyler*, 457 U.S. at 219, n. 19.

Such suspect classifications tend to "reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective." *Plyler*, 457 U.S. at 216, n. 14. Suspect classifications are often irrelevant to any legitimate governmental goal. *See McLaughlin v. Florida*, 379 U.S. 184 (1964); *Hirabayashi v. United States*, 320 U.S. 81 (1943).

In the instant case, the court below determined that the suspect class was "recently registered, foreign-born voters who requested bilingual ballots" and that the class possessed the traditional indicia of a suspect class based on race and national origin. *Russoniello*, 797 F.2d at 1521.

The court in *Russoniello* viewed the investigation here as targeting a class based on race and national origin. *Russoniello*, 797 F.2d at 1521. Although the investigation was targeted to review bilingual ballot requesters generally, in fact Chinese and Spanish bilingual ballots are targeted. According to the Court:

> Thus, while a non-English-speaking classification is facially neutral with respect to ethnic group classification, the classification challenged here is not because for all practical purposes it is a language classification based on race and national origin.

Russoniello, 979 F.2d at 1521.

This is an incorrect analysis of the standards to find an Equal Protection violation. To find impermissible language classifications, the Court must find an intent to discriminate on the basis of race, national origin or color. *Russoniello,* 797 F.2d at 1528 (Wallace, J., dissenting); *cf. Washington v. Davis*, 426 U.S. 229 (1976)(effect rather than intent). Standing alone, language characteristics do not constitute the parameters of a suspect class. *Frontera v. Sindell,* 522 F.2d 1215, 1219-20 (6th Cir. 1975). Moreover, unlike race, language cannot be viewed as the functional equivalent of national origin discrimination. *Cf. St. Francis College v. Al-Khazraji (Majid Ghaidan)* ___ U.S. ____, 107 S.Ct. 2022 (1987) ("races" under 42 U.S.C. § 1981 include Swedes, Germans, Greeks, Norwegians, Italians, etc.); *see Soberal-Perez v. Heckler,* 717 F.2d 36, 41 (2nd Cir. 1983), *cert. denied,* 466 U.S. 929 (1984).

These classifications are also presumptively invidious if they impinge upon the exercise of a fundamental right. *Blumstein, supra*. The interests at issue here are the right to register to vote, to request bilingual ballots and to vote.

Under Article I of the U.S. Constitution, the "right to vote, per se, is not a constitutionally protected right." *Rodriguez*, 411 U.S. at 35, n. 78. At most, individuals are entitled to "equal treatment in the voting process." *Id.* at 34, n. 74. "In other words, the right to vote is accorded extraordinary treatment because it is, in equal protection terms, an extraordinary right: a *citizen* cannot hope to achieve any meaningful degree of individual political equality if granted an inferior right of participation in the political process." *Plyler*,

457 U.S. at 233 (Blackmun, J., concurring) (emphasis added).

Under *Hirabayashi, supra*, and similar cases, government action against suspect classes is unlawfully discriminatory if it is without reference to any legitimate and compelling governmental objective. Here, however, Russoniello sought to further a legitimate and compelling governmental objective: the prevention of voter fraud. Russoniello's efforts to prevent voter fraud were, in fact, motivated by laws designed to prevent an inferior right of participation in the political process; no citizen's vote should be diluted by the votes of non- citizens.

In fact, the classifications employed here are only logical given the disparate treatment of voters under Federal law. The Voting Rights Act of 1965, codified at 42 U.S.C. § 1973, creates new requirements for jurisdictions that possess at least five percent of a population of persons whose principal language is other than English. 42 U.S.C. § 1973aa-1a(c). In these instances, the affected California counties provided bilingual ballots to eligible voters who requested them. Pet. App. 3a.

Theoretically, when this case was filed, the State of California and its political subdivisions were at liberty to provide bilingual ballots to as many different groups in as many different languages as there are diverse voters. As Respondents point out, passage of California's Proposition 63 may substantially curtail the use of multilingual ballots not required by federal law. Br. in Opp. 12-13, n. 8; CAL. CONST. art. III, § 6.

Nor was this a case in which special measures were undertaken to burden a particular group in the course of preventing voter fraud. The investigation was a routine pre-indictment, non-intrusive examination of voter and immigration records maintained by the county and federal governments, respectively, with none of the hallmarks of unlawful discrimination.

Russoniello's investigation was not designed to investigate a particular national origin class. He sought simply to examine the integrity of the registration procedures of those who most likely might be non-citizens. Since federal law requires some bilingual ballots, persons requesting such ballots cannot be presumed to be non-citizens. Non-citizens, however, are probably more likely to require non-English-language materials. *See* P. 16-17 *infra.* Applicants for naturalization are required to demonstrate a minimal understanding of English. 8 U.S.C. § 1423. A list of foreign-born persons requesting bilingual ballots could logically be a starting point for a determination of persons who statistically could be non-citizens erroneously registered. *See* P. 16-17 *infra.*

Nor are the particular languages spoken in the affected counties a valid guide to determine if inappropriate selection criteria were used. Chinese and Spanish-speaking persons predominated in the affected counties; therefore, under applicable federal law, bilingual registration forms were available in those languages. Pet. App. 3a. The investigation of these two language groups, as a consequence of geography, does not equate to discrimination based on national origin.

The most important policy question underlying this "suspect class," however, is the effect of a new suspect

classification. If this Court allows the lower court decision to stand, a "foreign-born, bilingual voter classification would become the functional equivalent of national origin discrimination.

Under the 14th Amendment, all persons born in the U.S. are citizens. U.S. CONST. Amend. XIV, cl. 4. With few exceptions, the only two classifications of birth are U.S. born and foreign born. Any classification of foreign-born persons as suspect will inevitably expand beyond those using bilingual ballots to all foreign-born persons.

Any classification of the "foreign-born" would include aliens, foreign-born naturalized citizens, and foreign-born U.S. citizens. 8 U.S.C. § 1401(a)(3), (4), and (7). The rights and characteristics of each of these classes are substantially different. Any general class of "foreign-born" is overbroad as a suspect class.

There is no support in the Constitution or any federal law for presuming that foreign born persons should be subject to the special protection of the courts. In fact, throughout American history, the opposite has been true, especially for the federal government: alienage classifications, particularly in an immigration context, have consistently been upheld. *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976); *Unitd States v. Gordon- Nikkar*, 518 F.2d 972 (5th Cir. 1975); *Cervantes v. Guerra*, 651 F.2d 974 (5th Cir. 1981).

A new "foreign-born" suspect class would have special rights not available to most U.S. citizens. Members of this "foreign- born" suspect class would not, for

example, be subject to a routine, non-custodial investigation into crimes related to alienage status, as by profile. That result is contrary to decisions of this Court. *Florida v. Royer,* 460 U.S. 491 (1983)(profiles used in questioning airline passenger who fit drug courier profile); *United States v. Mendenhall,* 446 U.S.– 544 (1980)(drug courier profile).

This Court should not countenance the creation of a "foreign-born" suspect classification. The decision of the Ninth Circuit describing a new suspect classification should be reversed.

II. EVEN IF "RECENTLY REGISTERED, FOREIGN-BORN VOTERS WHO REQUESTED BILINGUAL BALLOTS" CONSTITUTES A SUSPECT CLASS, THE U.S. ATTORNEY'S INVESTIGATION IS NARROWLY TAILORED TO ACHIEVE A COMPELLING STATE INTEREST.

No suspect class exists for voters who are foreign-born, recently-registered and bilingual. Voters with such a combination of characteristics, none of which alone constitute suspect classifications, do not carry the traditional indicia of a suspect classification. To date, no court has held that a language-based classification is the equivalent of one based on race or national origin requiring strict scrutiny as a suspect class. In fact, courts responding to this issue have consistently held that language-based classifications are not the equivalent of national origin classifications. *See Soberal-Perez v. Heckler, supra*; *Frontera v. Sindell,* 522 F.2d 1215, 1219-20 (6th Cir. 1975); *see also Jurado v. 1150 Corporation,* No. 86- 5606, slip op. (9th Cir. April 2, 1987)(English-only on-the-job rule upheld against

claim of discrimination); *Garcia v. Gloor,* 618 F.2d 264, 268 (5th Cir.), *reh. denied,* 625 F.2d 1016 (1980), *cert. denied,* 449 U.S. 1113 (1981).

Even if a new suspect class of foreign-born persons is created, Russoniello's actions can survive strict scrutiny by this Court. The strict scrutiny standard consists of two inquiries: 1) whether the governmental objective serves a compelling state interest, *Shapiro v. Thompson,* 394 U.S. 618 (1969); *McLaughlin v. Florida,* 379 U.S. 184 (1964); and 2) whether the means of accomplishing the objective are not only necessary but also the least discriminatory means available. *Loving v. Virginia,* 388 U.S. 1 (1967); *Dunn v. Blumstein,* 405 U.S. 330 (1972); *Shelton v. Tucker,* 364 U.S. 479 (1960).

The U.S. Attorney's objective of identifying possible criminal violations serves the compelling governmental interests of investigating possible crimes and protecting the voting process. Reasonable investigation of possible crimes has been identified as a compelling governmental interest, *LaRouche v. Webster,* 566 F. Supp. 415, 417 (S.D.N.Y. 1983), and as beyond judicial intrusion. *United States v. Chanen,* 549 F.2d 1306 (9th Cir.), *cert. denied,* 434 U.S. 825 (1977).

The fundamental principle of separation of powers prohibits the judicial branch from enjoining the executive branch's criminal investigations "in a way which encroaches on the prerogatives of [a prosecutor] unless there is a clear basis in fact and law for doing so." *United States v. Chanen,* 549 F.2d at 1313. "Only the most extraordinary circumstances warrant anticipatory

judicial involvement in criminal investigations." *Reporters' Committee for Freedom of the Press v. American Telephone & Telegraph Co.*, 593 F.2d 1030, 1065 (D.C.Cir. 1978), *cert. denied*, 440 U.S. 949 (1979); *see also LaRouche v. Webster*, 566 F.Supp. at 417 ("party seeking to enjoin a criminal investigation bears an almost insurmountable burden"). Here, Russoniello's investigatory actions were intended to determine whether there was a violation of the relevant sections of the Voting Rights Act, 42 U.S.C. § 1973dd-3(c), which punishes those who conspire to register non-citizens to vote.

As to the second inquiry of the means used, the investigation was closely tailored to disclose possible crimes in the least discriminatory way possible. The U.S. Attorney reasonably executed his investigatory powers in an attempt to identify possible voter fraud. Upon receipt of information which indicated that many recently registered foreign-born voters had been illegally registered to vote, he carefully began an investigation.

Initial efforts focused on those registrants who most likely had been improperly registered: those who were most likely to be non-citizens, the foreign-born. Then the inquiry shifted to those foreign-born persons who exhibited a characteristic likely to indicate non-citizenship: lack of familiarity with the English language, as demonstrated by a request for a non-English-language ballot. Although either or both of these requests could, if made with discriminatory intent, be unlawful, in this case, the selection was made to maximize the possibility of finding evidence of illegality.

According to the evidence available to the U.S. Attorney in this case, foreign-born persons who do not speak English well were more likely to be non-citizens who were improperly registered. The U.S. Attorney was aware that the Spanish voter registration materials erroneously said that voters "should" be citizens. Pet. App. 79a & n. 1, J.A. 122. This error may have drawn non-English-speaking non-citizens into registering, a fact which Russoniello could have relied on in selecting bilingual ballot applicants for scrutiny.

There are few alternative review techniques to investigate non-citizens voting than to use probabilities to determine likely groups for additional scrutiny. Such scrutiny has been permitted in criminal investigations, particularly in investigations involving aliens. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 886-887 (1975); *United States v. Cortez*, 449 U.S. 101 (1981). After obtaining the names of foreign-born voters who had requested bilingual ballots, those most likely not to be eligible to vote, Russoniello further narrowed his investigation by verifying the citizenship of the registrants with the Immigration and Naturalization Service. Only those persons whom INS was unable to identify were then interviewed, by mail or in person, on a voluntary basis by the county district attorneys. In fact, 27 per cent, one in four, of Russoniello's sample of voters were determined to be non- citizens. Pet. App. 80a, J.A. 64, 180.

Ironically, the very factors by which Russoniello so carefully tailored his investigation are the ones which Respondents maintain are suspect. As citizenship is a fundamental requirement for the right to vote, the

focus on foreign birth, a strong indication of possible foreign citizenship, can hardly be invidious discrimination. The criminal activity sought was illegal registration of noncitizens. Virtually all people born in the United States are citizens. Since most non-citizens are foreign-born, any investigation into voter fraud by noncitizens must inevitably include investigations of foreign-born persons. If foreign-born persons are constitutionally protected against any investigation of voter fraud, no investigations of voter fraud involving noncitizens could be undertaken.

Similarly, the factor of recent registration does not suggest any invidious discrimination. The focus on recent registration merely narrows the investigation to those who had registered at a time when illegal registrations most likely occurred, necessarily producing persons most likely to have been witness to criminal activity.

The government's compelling interest to ensure the sanctity of the polls and its reasonable methods to enforce the laws protecting them must necessarily prevail over an incidental burden, if any, from a routine criminal investigation. The right to vote is granted only to United States citizens. It is at the core of the representative form of government. Accordingly, the government has an overriding interest in protecting this privilege and has used reasonable methods to do so.

CONCLUSION

Voter fraud by non-citizens is a national problem. In response to reliable information that those registering non- English-speaking voters might be registering per-

sons not eligible to vote, U.S. Attorney Russoniello sought to cross-check voter registration records with citizenship records maintained by the Immigration and Naturalization Service. The investigation was conducted in an unobtrusive manner using public information and included foreign-born persons as possible non-citizens. The survey produced results indicating that 27 per cent of those examined were, in fact, ineligible to vote.

The class defined by the Ninth Circuit ("recently-registered, foreign-born voters who requested bilingual ballots") does not possess the traditional indicia of a suspect class. A decision upholding the lower court's new suspect class would create a new level of classification with potentially substantial effects on alienage classifications in many federal laws, including newly-revised immigration laws.

The classification used in this investigation was rational and designed to achieve a compelling governmental interest. The state's interest in preventing voter fraud is paramount to ensuring the integrity of the franchise and equality of voting among citizens.

The decision of the Ninth Circuit Court of Appeals should be reversed.

Respectfully submitted,

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